

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #1	CCRB Case #: 201900172	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/19/2018 4:00 PM	Location of Incident: Montgomery Street between McKeever Place and Franklin Avenue; 71st Precinct stationhouse	Precinct: 71	18 Mo. SOL 6/19/2020	EO SOL 2/3/2021	
Date/Time CV Reported Mon, 01/07/2019 12:08 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/07/2019 12:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Mercado	07106	958926	071 PCT
2. SGT Anthony Blum	00426	948681	071 PCT
3. POM Matias Franco	25827	964000	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Antonious Michael	11215	960942	071 PCT
2. POM Michael Hughes	08346	960691	071 PCT
3. POM Jason Schreckenstein	01340	956247	071 PCT
4. POF Jessica Rodriguez	12458	956211	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Mercado	Abuse: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado stopped § 87(2)(b)	
B.POM Matias Franco	Abuse: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco stopped § 87(2)(b)	
C.POM Michael Mercado	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado pointed his gun at § 87(2)(b)	
D.POM Matias Franco	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco pointed his gun at § 87(2)(b)	
E.POM Michael Mercado	Discourtesy: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado spoke discourteously to § 87(2)(b)	
F.POM Matias Franco	Discourtesy: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco spoke discourteously to § 87(2)(b)	
G.POM Michael Mercado	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Michael Mercado	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)	
I.POM Michael Mercado	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)	
J.POM Michael Mercado	Abuse: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado frisked § 87(2)(b)	
K.POM Matias Franco	Abuse: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco frisked § 87(2)(b)	
L.SGT Anthony Blum	Force: At Montgomery Street between McKeever Place and Franklin Avenue, Sergeant Anthony Blum used physical force against § 87(2)(b)	
M.SGT Anthony Blum	Abuse: At Montgomery Street between McKeever Place and Franklin Avenue, Sergeant Anthony Blum searched § 87(2)(b)	
N.POM Michael Mercado	Abuse: At the 71st Precinct stationhouse, Police Officer Michael Mercado did not obtain medical treatment for § 87(2)(b)	

Case Summary

On January 7, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On December 19, 2018, between 3:30 and 4:30 p.m., § 87(2)(b) was inside a store at § 87(2)(b) in Brooklyn when he engaged in a verbal argument with the cashier, § 87(2)(b), who called the police and alleged that § 87(2)(b) had a gun. Police Officers Michael Mercado and Matias Franco from the 71st Precinct stopped § 87(2)(b) a few blocks away on Montgomery Street and McKeever Place and approached with their guns pointed at § 87(2)(b) (**Allegations A-D: Abuse of Authority and Force**, § 87(2)(g)). PO Mercado and PO Franco cursed at § 87(2)(b) (**Allegations E-F: Discourtesy**, § 87(2)(g)). PO Mercado allegedly kicked § 87(2)(b)'s cell phone in his hand, hit his other hand, and kicked him in the leg before handcuffing him (**Allegation G-I: Force**, § 87(2)(g)). PO Mercado and PO Franco frisked § 87(2)(b) (**Allegations J-K: Abuse of Authority**, § 87(2)(g)). Sergeant Anthony Blum from the 71st Precinct responded to the scene and allegedly punched § 87(2)(b) in the face (**Allegation L: Force**, § 87(2)(g)). Sgt. Blum searched § 87(2)(b) (**Allegation M: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) arrested for § 87(2)(b) and taken to the 71st Precinct stationhouse where he requested medical attention but did not receive it (**Allegation N: Abuse of Authority**, § 87(2)(g)).

The CCRB obtained body-worn camera footage from five officers on (Board Review 01-06).

Findings and Recommendations

Allegation (A) Abuse of Authority: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado stopped § 87(2)(b)

Allegation (B) Abuse of Authority: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco stopped § 87(2)(b)

Allegation (C) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado pointed his gun at § 87(2)(b)

Allegation (D) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco pointed his gun at § 87(2)(b)

It is undisputed that on December 19, 2018, § 87(2)(b) engaged in a verbal dispute with § 87(2)(b) in Brooklyn. § 87(2)(b) called 911 and reported that § 87(2)(b) had a gun. § 87(2)(b) threw food items that were on the store counter at § 87(2)(b) and then left the store. PO Mercado and PO Franco stopped § 87(2)(b) on Montgomery Street between McKeever Place and Franklin Avenue. PO Mercado and PO Franco approached with their guns pointed at § 87(2)(b).

§ 87(2)(b) provided a phone statement and an in-person verified statement to the CCRB, which were generally consistent (Board Review 07, Board Review 08). On § 87(2)(b), § 87(2)(b) gave testimony about this incident during a 50-H hearing regarding a notice of claim he filed with the City (Board Review 09). § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) testified that he did not have a gun during the incident (Board Review 08). § 87(2)(b) also denied threatening § 87(2)(b) with a gun. § 87(2)(b) identified himself as a § 87(2)(b)-old Black male who was approximately 5'10" tall. § 87(2)(b) was wearing a green coat, jeans, and a hat at the time of incident.

The initial 911 call was for a dispute with firearm inside, according to the event information (Board Review 24). The caller, noted as a male named "§ 87(2)(b)" stated the perpetrator displayed his gun and destroyed property. Additionally, the caller described the perpetrator as a Black male, approximately 40-years-old, 5'11" tall, and wearing a black coat, black pants, and a brown hoodie.

PO Mercado and PO Franco provided consistent testimony regarding this incident (Board Review 10, Board Review 11). PO Mercado and PO Franco stated that they arrived at § 87(2)(b) and asked § 87(2)(b) to canvass the area with them. § 87(2)(b) told the officers that § 87(2)(b) threatened him and exposed a firearm under his jacket. As they drove down Montgomery Street, § 87(2)(b) saw § 87(2)(b) walking on the sidewalk and told the officers that was the man who threatened him. PO Mercado and PO Franco saw that § 87(2)(b) matched the description provided over the radio. PO Mercado and PO Franco exited their vehicle and pointed their weapons at § 87(2)(b). PO Mercado and PO Franco pointed their weapons for their safety because they believed § 87(2)(b) possessed a firearm.

PO Mercado's and PO Franco's body-worn camera videos corroborate the officers' testimony (Board Review 01, Board Review 02).

According to People v. DeBour 40 N.Y. 2d 210 (1976), an officer can stop a person when the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a crime (Board Review 12).

NYPD Patrol Guide Procedure 212-11 states that reasonable force may be used to stop a person, but the type and amount of force must be objectively reasonable under the circumstances (Board Review 13). NYPD Patrol Guide Procedure 221-01 states that the decision to display and draw a firearm should be based on an articulable belief that the potential for serious physical injury is present (Board Review 14).

§ 87(2)(g)

Allegation (E) Discourtesy: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado spoke discourteously to § 87(2)(b)

Allegation (F) Discourtesy: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco spoke discourteously to § 87(2)(b)

The body-worn camera videos from PO Mercado and PO Franco showed that the officers used profanity when issuing commands to § 87(2)(b) (Board Review 01, Board Review 02). PO Franco told § 87(2)(b) twice to put his hands up. § 87(2)(b) said something unintelligible and did not put his hands up. Then PO Franco said, “Put your fucking hands up.” § 87(2)(b) complied. PO Franco told § 87(2)(b) “Get down on the ground right now.” § 87(2)(b) with his hands in the air, replied to PO Franco but did not get on the ground. PO Franco said, “Get down on the fucking ground right now.” § 87(2)(b) laid on the ground on his stomach. PO Mercado approached § 87(2)(b) and said, “Let me see your fucking hands.” PO Mercado handcuffed § 87(2)(b) behind his back.

PO Mercado and PO Franco both admitted to using profanity in their commands to § 87(2)(b) for compliance (Board Review 10, Board Review 11).

§ 87(2)(g) § 87(2)(b) did state that he did not immediately comply with the officers’ multiple commands (Board Review 08).

NYPD Patrol Guide Precedure 203-09 requires that officers interact with members of the public in a professional manner (Board Review 15). However, DAO-DCT Disciplinary Case No. 2017-17005 found that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (Board Review 16).

§ 87(2)(g) [REDACTED]

Allegation (G) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)
Allegation (H) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)
Allegation (I) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado used physical force against § 87(2)(b)

§ 87(2)(b) testified that PO Mercado used physical force against him while he was on the ground (Board Review 08). § 87(2)(b) had his cell phone in his right hand and a lit cigarette in his left. PO Mercado holstered his weapon, approached § 87(2)(b) and kicked § 87(2)(b)’s right hand dislodging the phone. Neither § 87(2)(b)’s hand nor his cell phone sustained injury. PO Mercado then slapped the cigarette, making contact with § 87(2)(b)’s left hand. This also did not cause injury. PO Mercado kicked § 87(2)(b) a few inches below his knee on the outside of his left calf. This caused § 87(2)(b) pain because he had a bullet lodged in his calf from a prior injury.

§ 87(2)(a) Gen.Mun. §50-H(3) [REDACTED]

PO Mercado denied using any physical force against § 87(2)(b) (Board Review 10).

PO Mercado's body-worn camera video showed that PO Mercado did not use physical force against § 87(2)(b) (Board Review 01). PO Mercado stood over § 87(2)(b) with his legs on either side of § 87(2)(b)'s body, and handcuffed § 87(2)(b). PO Mercado used his hand to take the phone out of § 87(2)(b)'s right hand. PO Mercado told § 87(2)(b) to drop his cigarette, which he did.

§ 87(2)(g)

Allegation (J) Abuse of Authority: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Michael Mercado frisked § 87(2)(b)

Allegation (K) Abuse of Authority: At Montgomery Street between McKeever Place and Franklin Avenue, Police Officer Matias Franco frisked § 87(2)(b)

It is undisputed that PO Mercado and PO Franco frisked § 87(2)(b). PO Mercado and PO Franco patted the outside of § 87(2)(b)'s jacket, around his waistband, and down his arms and legs.

§ 87(2)(g)

People v. DeBour 40 N.Y. 2d 210 (1976) held that an officer may frisk a suspect when the officer has reasonable suspicion that the suspect is armed (Board Review 12).

§ 87(2)(g)

Allegation (L) Force: At Montgomery Street between McKeever Place and Franklin Avenue, Sergeant Anthony Blum used physical force against § 87(2)(b)

Allegation (M) Abuse of Authority: At Montgomery Street between McKeever Place and Franklin Avenue, Sergeant Anthony Blum searched § 87(2)(b)

Additional officers arrived at the scene, including uniformed and plainclothes officers.

§ 87(2)(b) testified that, while he stood at the scene in handcuffs, a plainclothes officer approached him and punched him in the face (Board Review 08). § 87(2)(b) stated that the officer used his right hand to punch the left side of § 87(2)(b)'s face below his cheekbone once. § 87(2)(b) stated that he did not sustain any injuries from the punch. The officer subsequently patted § 87(2)(b)'s chest and around his waist. § 87(2)(b) stated that the officer did not enter his pockets.

§ 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)'s arrest photo did not depict any injury to § 87(2)(b)'s face (Board Review 25).

The body-worn camera videos from PO Mercado and PO Franco do not show that any officer punched § 87(2)(b) (Board Review 01, Board Review 02). The videos showed that a plainclothes officer approached § 87(2)(b) and informed him that he was under arrest. The officer searched § 87(2)(b) by reaching his hands inside § 87(2)(b)'s jacket pockets.

In his testimony, PO Franco identified Sgt. Blum as the plainclothes officer interacting with § 87(2)(b) (Board Review 11).

§ 87(2)(f)

NYPD Patrol Guide Procedure 208-03 requires that officers conduct a frisk and search for an arrested individual prior to transporting the individual to the stationhouse (Board Review 17).

§ 87(2)(g)

Allegation (N) Abuse of Authority: At the 71st Precinct stationhouse, Police Officer Michael Mercado did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) consistently testified that, while at the 71st Precinct stationhouse, he asked two or three officers if he could go to the hospital (Board Review 08). § 87(2)(b) told the officers that his leg was bothering him. Each time he asked, the officers responded that they would notify § 87(2)(b)'s arresting officer. When PO Mercado came back to the cells, PO Mercado told § 87(2)(b) that he needed to wait until the paperwork was finished. § 87(2)(b) was transported to Central Booking where a nurse examined his leg. § 87(2)(b) told the nurse that he did not want to go to the hospital. Later, § 87(2)(b) requested to go to the hospital. § 87(2)(b) was transported to a hospital where he received ibuprofen.

The 71st Precinct command log only noted that § 87(2)(b) was transported to Central Booking at 10:50 p.m. (Board Review 26). There was no entry regarding § 87(2)(b) seeking medical attention.

The FDNY ambulance call report confirmed that § 87(2)(b) requested an ambulance for leg pain when he was at Central Booking (Board Review 18). The call report stated that § 87(2)(b) was transported to § 87(2)(b).

§ 87(2)(b) has no record of treating § 87(2)(b) on the incident date (Board Review 19).

PO Mercado testified that § 87(2)(b) did not request medical attention (Board Review 10). PO Mercado stated that § 87(2)(b) did not complain about any injuries and that he was not aware of § 87(2)(b)'s prior injury to his leg. PO Mercado ended his tour before § 87(2)(b) was transported to Central Booking.

PO Franco stated that § 87(2)(b) did not request medical attention from any of the officers (Board Review 11). After lodging § 87(2)(b) in the cell area, PO Franco did not interact with § 87(2)(b) again.

Although they only capture until § 87(2)(b) was lodged at the stationhouse, the body-worn camera videos did not show that § 87(2)(b) asked for medical attention or complained about leg pain (Board Review 01, Board Review 02).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to 10 CCRB complaints and has been named as a victim in 25 allegations (Board Review 20):
 - § 87(2)(g)
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- Police Officer Michael Mercado has been a member of service for four years and this is the first CCRB complaint to which he has been a subject (Board Review 21).
- Police Officer Matias Franco has been a member of service for two years and this is the first CCRB complaint to which he has been a subject (Board Review 21).

